

REMARKS

1. Present Status of Patent Application

This is a full and timely response to the outstanding final Office Action mailed October 21, 2004. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

2. Examiner Interview

Applicant first wishes to express his sincere appreciation for the time that Examiner Smith spent with Applicant's Attorney, Charles Griggers, during a telephone discussion on November 17, 2004, regarding the outstanding Office Action. During that conversation, Applicant discussed proposed amendments to claim 1 and arguments that are believed to further distinguish the claims from the *Lazaridis* and *Nakata* references. Examiner Smith seemed to indicate that it would be potentially beneficial for the Applicant to make the proposed amendments that are included herein. Thus, Applicant respectfully requests that Examiner Smith carefully consider this response and the amendments.

In addition on January 21, 2005, Applicant's Attorney, Charles Griggers, during a telephone discussion with Examiner Smith, pointed out that claims 21-59 were not addressed in the current office action. In response, Examiner Smith advised the Applicant to request reconsideration of the present application so that a new office action may be issued. Thus, Applicant respectfully requests that Examiner Smith reconsiders the present application and issues a new office action.

3. Improper Issuance of Final Office Action

Applicant respectfully requests the withdrawal of the finality of the present Office Action. The Office Action mailed October 21, 2004 rejected claims 1-20 and did not reference claims 21-59 that were added in the previous response to a non-final Office Action (mailed March 18, 2004). As such, claims 21-59 have not been examined by the Patent Office, and consequently, the finality of the present Office Action is improper, for at least these reasons.

4. Response To Rejections of Claims 1-20 Under 35 U.S.C. § 103(a)

In the Office Action, claims 1-20 stand rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over *Lazaridis* (U.S. Patent No. 6,219,694 B1) in view of *Nakata* (U.S. Patent Application Publication No. 2002/0188515 A1). For a proper rejection of a claim under 35 U.S.C. Section 103, the teachings of the prior art references must suggest all features of the claimed invention to one of ordinary skill in the art. *See, e.g., In re Dow Chemical*, 837 F.2d 469, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 642 F.2d 413, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981).

a. Claim 1

As provided in independent claim 1, Applicant claims:

An apparatus for sending a message received from a sender over a wireless network, the apparatus comprising:

a gateway for receiving the message transmitted over an external network in communication with the gateway, the message including identification of a recipient of the message, a delivery instruction and delivery information indicating a time at which the message is to be delivered to a wireless device of the recipient, for storing the message, and for carrying out the delivery instruction by delivering the message at the time indicated by the delivery information;

wherein the delivery instruction and delivery information is set by the sender.

(Emphasis added).

Applicant respectfully submits that independent claim 1 is allowable for at least the reason that *Lazaridis* in view of *Nakata* does not disclose, teach, or suggest anywhere in the specification or in the figures at least the features of “a gateway for receiving the message transmitted over an external network in communication with the gateway, the message including identification of a recipient of the message, a delivery instruction and delivery information indicating a time at which the message is to be delivered to a wireless device of the recipient, for storing the message, and for carrying out the delivery instruction by delivering the message at the time indicated by the delivery information; wherein the delivery instruction and delivery information is set by the sender,” as recited in claim 1.

In contrast, *Lazaridis* discloses a system for “triggering the . . . redirection of user-selected data items stored on a user host system to a mobile data communication device” of the user. Col. 4, lines 50-53. Therefore, *Lazaridis* appears to disclose a system whereby messages that are received by a user can be redirected to another device of the user. However, *Lazaridis* fails to disclose a system whereby messages that are sent by the user are capable of being redirected by the user. In other words, *Lazaridis* fails to at least disclose the claimed features of “receiving a message” and then “carrying out the delivery instruction by delivering the message at the time indicated by the delivery information,” where “the delivery instruction and delivery information is set by the sender.”

Regarding *Nakata*, messages or parcels are sent over a physical delivery channels and not a wireless network. Further, in *Nakata*, a sender of a physical parcel does not specify a time at which the message is to be delivered. Rather, a sender can specify a “desired delivery date and time.” Also, the recipient of the physical parcel appears to specify the delivery instructions that are followed. *See, e.g.*, para. 8. (“Accordingly, a member registers his/her form of package receiving by him/her in advance. Thus he/she can receive the package in accordance with his schedule.”) Thus, *Nakata* also fails to disclose, teach, or suggest at least the claimed features of “receiving a message” and then “carrying out the delivery instruction by delivering the message at the time indicated by the delivery information,” where “the delivery instruction and delivery information is set by the sender.” As such, *Nakata* is legally inadequate to cure the deficiencies of the *Lazaridis* reference, and the rejection of claim 1 should be withdrawn.

b. Claims 2-12

Claims 2-12 (which depend from independent claim 1) are allowable for at least the reason that independent claim 1 is allowable over the cited art of record. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for the allowability of claims 2-12, these dependent claims recite further features (as is apparent by examination of the claims themselves) that are patentably distinct from the cited art of record. Hence, there are other reasons why these dependent claims are allowable.

c. Claim 13

As provided in independent claim 13, Applicant claims:

A method of sending a message by a sender to a user of a wireless device over a wireless network, the method comprising:

sending a message including identification of a recipient of the message, a delivery instruction and delivery information indicating a time at which the message is to be delivered to the wireless device of the recipient;

storing the message; and

delivering the message to the wireless device over the wireless network at the time indicated by the delivery information;

wherein the delivery instruction and the delivery information is set by the sender.

(Emphasis added).

Applicant respectfully submits that independent claim 3 is allowable for at least the reason that *Lazaridis* in view of *Nakata* does not disclose, teach, or suggest anywhere in the specification or in the figures at least the features of “sending a message including identification of a recipient of the message, a delivery instruction and delivery information indicating a time at which the message is to be delivered to the wireless device of the recipient . . . wherein the delivery instruction and the delivery information is set by the sender,” as recited in claim 13.

In contrast, *Lazaridis* discloses a system for “triggering the . . . redirection of user-selected data items stored on a user host system to a mobile data communication device” of the user. Col. 4, lines 50-53. Therefore, *Lazaridis* appears to disclose a system whereby messages that are received by a user can be redirected to another device of the user. However, *Lazaridis* fails to disclose a system whereby messages that are sent by the user are capable of being redirected by the user. In other words, *Lazaridis* fails to at least disclose the claimed features of having “delivery instruction and delivery information indicating a time at which the message is to be delivered to the wireless device of the recipient . . . wherein the delivery instruction and the delivery information is set by the sender.”

Regarding *Nakata*, messages or parcels are sent over a physical delivery channels and not a wireless network. Further, in *Nakata*, a sender of a physical parcel does not specify a time at which the message is to be delivered. Rather, a sender can specify a “desired delivery date and time.” Also, the recipient of the physical parcel appears to specify the delivery instructions that are followed. *See, e.g.*, para. 8. (“Accordingly, a member registers his/her form of package

receiving by him/her in advance. Thus he/she can receive the package in accordance with his schedule.”) Thus, *Nakata* also fails to disclose, teach, or suggest at least the claimed features of having “delivery instruction and delivery information indicating a time at which the message is to be delivered to the wireless device of the recipient . . . wherein the delivery instruction and the delivery information is set by the sender.” As such, *Nakata* is legally inadequate to cure the deficiencies of the *Lazaridis* reference, and the rejection of claim 13 should be withdrawn.

d. Claims 14-20

Claims 14-20 (which depend from independent claim 13) are allowable for at least the reason that independent claim 13 is allowable over the cited art of record. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for the allowability of claims 14-20, these dependent claims recite further features (as is apparent by examination of the claims themselves) that are patentably distinct from the cited art of record. Hence, there are other reasons why these dependent claims are allowable.

5. Claims 21-59

Applicant respectfully asserts that claims 21-59 are allowable over the cited art of record for at least the reason that the cited art does not disclose, teach, or suggest the features of the respective claims.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-59 are in condition for allowance. In addition, Applicant does not intend to admit anything regarding any other statements in the Office Action that is not explicitly referenced in this response. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,


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